

# FISCAL NOTE

**Bill #:** SB0503

**Title:** Revise procedure for imposing death penalty

**Primary**

**Sponsor:** Jon Ellingson

**Status:** As introduced

Sponsor signature	Date	Dave Lewis, Budget Director	Date
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## Fiscal Summary

	<b><u>FY2000</u></b> <b><u>Difference</u></b>	<b><u>FY2001</u></b> <b><u>Difference</u></b>
<b>Expenditures:</b>	\$0	\$0
<b>Revenue:</b>	\$0	\$0
<b>Net Impact on General Fund Balance:</b>	\$0	\$0

<b><u>Yes</u></b>	<b><u>No</u></b>		<b><u>Yes</u></b>	<b><u>No</u></b>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

## Fiscal Analysis

### ASSUMPTIONS:

#### **Department of Corrections (DOC)**

1. Since this bill has a statutory obligation to pay for inmate trial costs, there could be fiscal impact to DOC. Costs for requiring a jury to determine a death sentence are greater than the costs for a court's determination. The DOC cannot estimate the fiscal impact of this bill because it cannot predict court costs or the future likelihood of inmates committing a crime in which the death penalty applies.

#### **Department of Justice**

2. SB503 will require, in all cases when the prosecution seeks the death penalty, a separate sentencing phase of the trial using the same jury that decided the defendant's guilt. The sentencing hearing will begin within three days after conclusion of the trial.

(continued)

3. SB503 probably will not directly affect the six capital cases currently involved in various stages of the appeal process. However, the bill could have an impact on any current case that is remanded for re-sentencing—in which case the bill does not provide a procedure to be followed on remand.
4. Because it creates an entirely new sentencing scheme for death eligible defendants, the bill also has the potential to affect current cases in the context of a court’s “proportionality review” of death sentences imposed in particular cases.
5. SB503 will add to the cost and length of trial in capital cases. Selection of the jury in a capital case will take longer and be more difficult, since each prospective juror will have to be “death qualified” (i.e., express willingness to recommend a death sentence if warranted by the facts and law in the case). The sentencing hearings will also take longer because of presentation of evidence to and deliberation by a jury, and require additional costs for the jury to remain present through the sentencing phase of the proceeding.
6. Because of the legal issues involved in imposing a death sentence on a jury’s recommendation, there is likely to be litigation in future cases to ensure that the procedure specified in SB503 complies with the constitutional mandates of U.S. Supreme Court decisions.
7. It is impossible to determine precise fiscal impact of this measure because it depends almost exclusively on the number of cases tried during the biennium that involve a potential death sentence. That, in turn, depends upon the number of serious crimes committed, which is impossible to estimate.
8. There is no fiscal impact to the state funded Judiciary.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

**Department of Corrections**

This bill could fiscally impact local and county expenditures because costs for requiring a jury to determine a death sentence are greater than the current court determination system; however, the DOC cannot estimate the impact.

**Department of Justice**

Longer trials in capital cases could have a negative impact on the district court reimbursement fund, which pays all expenses in criminal cases, and the counties, which pay any expenses not covered by the reimbursement fund.

TECHNICAL NOTES:

**Department of Justice**

The bill does not make clear what procedure is to be followed if a case is appealed and the appellate court sends it back for re-sentencing. (Is a new jury to be selected? The same jury returned? Or no jury at all?)